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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

NO. 73-338

INDIANA REAL ESTATE COMMISSION, THOMAS DICKSON, EXECUTIVE SECRETARY; WARD DUNCAN, WILLIAM SCHMIDT, CURTIS HUBER, HARLEY SNYDER, WILLIAM LONG, JAMES BIBILYA, DAVID FAIR, CARL MILLER, REX BREEDEN, DON MC CULLOUGH, EUGENE MC CLAIN, FRED KELLY, WAYNE SMELTZER, MEMBERS OF THE BOARD OF DIRECTORS OF THE INDIANA REAL ESTATE COMMISSION, STATE OF INDIANA,
Petitioners,

-v-

VIJAY V. SATOSKAR, AND ALL OTHERS SIMILARILY SITUATED,
Respondents.

PETITION FOR WRIT OF CERTIORARI

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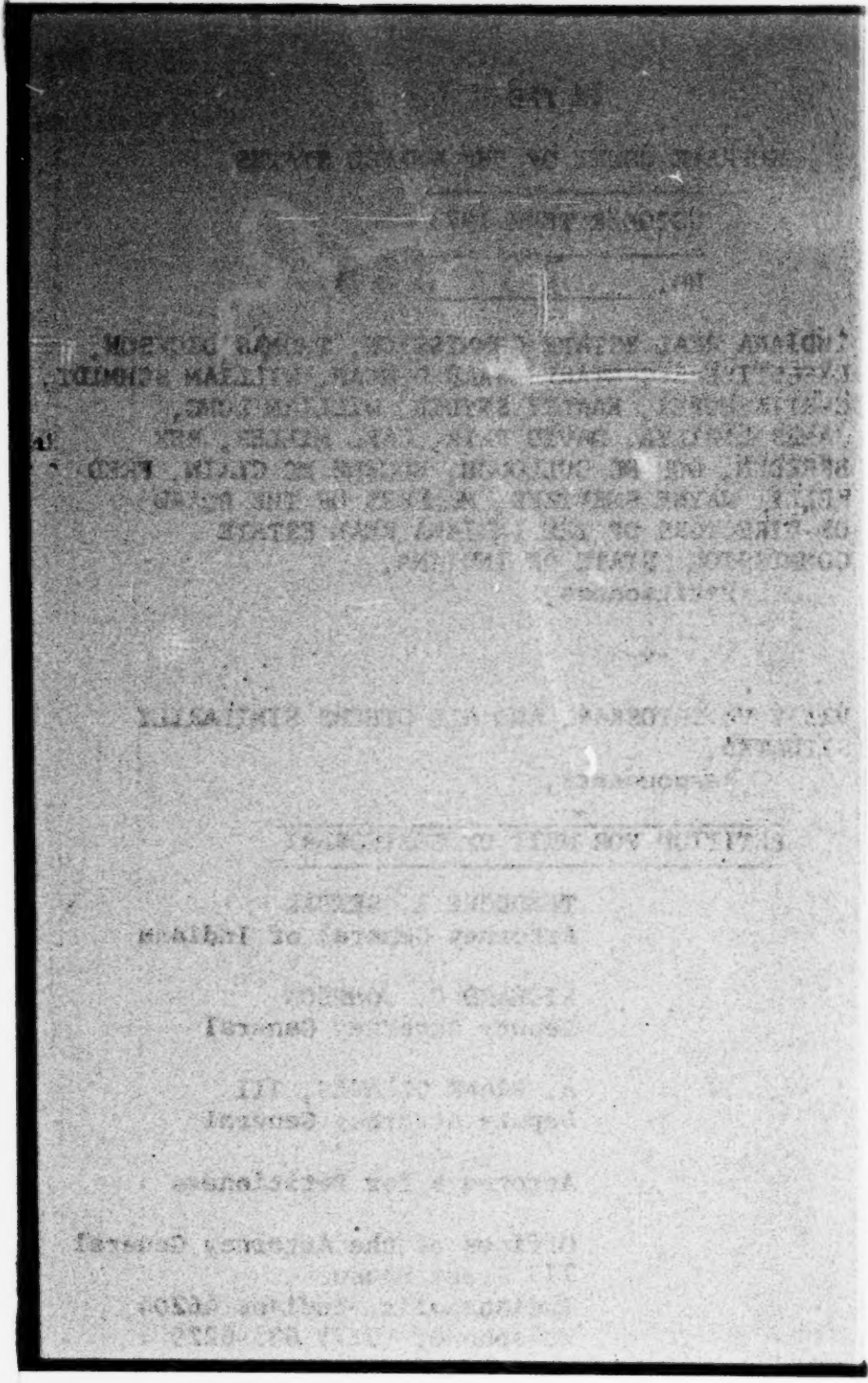

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

NO._____

INDIANA REAL ESTATE COMMISSION, THOMAS DICKSON, EXECUTIVE SECRETARY; WARD DUNCAN, WILLIAM SCHMIDT, CURTIS HUBER, HARLEY SNYDER, WILLIAM LONG, JAMES BOBILYA, DAVID FAIR, CARL MILLER, REX BREEDEN, DON MC CULLOUGH, EUGENE MC CLAIN, FRED KELLY, WAYNE SMELTZER, MEMBERS OF THE BOARD OF DIRECTORS OF THE INDIANA REAL ESTATE COMMISSION, STATE OF INDIANA,

Petitioners,

-v-

VIJAY V. SATOSKAR, AND ALL OTHERS SIMILARILY SITUATED,

Respondents,

PETITION FOR WRIT OF CERTIORARI

The Petitioners heretofore filed a Notice of Appeal in the United States Court of Appeals for the Seventh Circuit on June 13, 1973, but have realized that

the cause is more properly pursued as a petition for writ of certiorari. Hence the Petitioners respectfully pray that a writ of certiorari issue to review an Order of the United States Court of Appeals for the Seventh Circuit.

OPINION BELOW

The Order of the United States Court of Appeals for the Seventh Circuit is unreported, but the Order is set out in Appendix A hereto.

JURISDICTION OF THE COURT

The Order of the United States Court of Appeals for the Seventh Circuit was entered on May 24, 1973, and a Motion for Recall and Stay of the Order was denied on June 26, 1973. This Petition for Writ of Certiorari is being filed within ninety (90) days of the Order of May 24, 1973. This Court's jurisdiction

is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether the United States Court of Appeals for the Seventh Circuit erred in vacating an Order of the United States District Court for the Southern District of Indiana in which said District Court determined that it should abstain from action pending a determination by the Indiana courts on the constitutionality of a state statute.

STATUTE INVOLVED

Indiana Code of 1971, 25-34-1-12, as found in Burns Indiana Statutes Annotated §63-2411(2):

> 63-2411. Minimum standards and requirements for licensure of real estate salesmen and brokers—Salesman restrictions.—the Commission shall require all applicants for licensure as a real estate salesman or real estate broker to have and possess the following minimum

standards to qualify for licensure:

(2) All applicants must be citizens of the United States prior to submitting an application for licensure.

(10) A partnership or corporation shall be eligible for licensure as a real estate broker upon proper application having been made to the commission by such partnership or corporation: Provided, however, That if the application is a partnership, all members thereof shall have been licensed as such real estate broker, and all of the employees of said partnership active in the sale of real estate, shall be licensed as a real estate broker or real estate salesman according to the terms of this statute. If the application for such license is a corporation, proof must be submitted that such corporation shall have the sponsoring or responsible individual duly licensed as a real estate broker under the provisions of this statute, and that all of the employees, agents and officers of said corporation who intend or do engage in the active sale of real estate or otherwise performing the duties of real estate salesman or brokers under the terms of this act shall be duly licensed as a real estate broker or real estate salesman pursuant to the provisions of this statute.

STATEMENT OF THE CASE

On February 22, 1972, Respondent Vijay V. Satoskar (hereafter referred to as Satoskar) filed his complaint in the United States District Court for the Southern District of Indiana, Indianapolis Division, as a class action against the Petitioners, an agency of the State of Indiana and its officials. The complaint alleged that an Indiana statute, Indiana Code of 1971 (I.C. 1971), 25-34-1-12(2) found in Ind. Ann. Stat. §63-2411(2) (Burns 1972 Supp.), which is hereafter referred to as the statute, violated the equal protection clauses of the United States and Indiana Constitutions. The relief requested was the convening of a three-judge court, a declaratory injunction that the statute is unconstitutional, an injunction against its enforcement, money

damages of $100,000.00, and attorney fees.

Satoskar alleged in his complaint that he had applied for a real estate license but was prevented from so applying and from taking a required real estate course at the Indianapolis Branch of Purdue and Indiana Universities (I.U.-P.U.I.) because of the statute's requirement that only United States citizens may be licensed.* (R. pp. 4-8). The relevant parts of that statute are set out above at pages 3 and 4.

The State Agency filed a Motion to Dismiss on February 24, 1972, urging

*It must be assumed, although it is never alleged, that the State Agency controlled the enrollment in the class. I.U.-P.U.I. and its officials were not made parties to the suit. Unless such an assumption were made, the case would be moot because the relief requested would still not allow Satoskar to be licensed.

abstention as to the Constitutional issue and alleging failure to state a claim upon which relief can be granted as to the prayer for money damages and attorney fees (R. pp. 25-27).

After the filing of various memoranda of law by the parties, the District Court on April 19, 1972, entered an order containing the following rulings.

> "By motion of the Court, all claims asserted on behalf of all others similarly situated to the named plaintiff are hereby DISMISSED and reference to the class action in the caption of the subject cause and paragraph 5 of the complaint are hereby STRICKEN. Plaintiff's motion for a temporary restraining order is hereby DENIED. Defendants' motion to dismiss is GRANTED in part and the portion of the subject seeking money damages, costs and reasonable attorney's fees is hereby DISMISSED. Plaintiff's motion to strike the prayer for money damages in paragraph 24 of the complaint and substitute 'a prayer for reasonable damages for the class' is hereby rendered MOOT. Plaintiff's March 16, 1972, request

for oral argument is hereby DENIED. The remainder of defendants' motion to dismiss and the alternative request for abstention, addressed to the portion of the complaint seeking declaratory and injunctive relief, is taken under advisement by the Court for further consideration."

On May 19, 1972, the District Court ruled that it would abstain from further action in the case, but would retain jurisdiction pending the filing and outcome of an action by Satoskar in the Indiana courts.

Satoskar appealed the District Court's Order to the United States Court of Appeals for the Seventh Circuit, the Brief of Appellant having been filed on August 5, 1972, the Brief of Appellee having been filed on October 20, 1972, and oral argument having been held on April 27, 1973. The Order of the Court of Appeals, appended hereto, was entered on May 24,

1972. A Motion for Recall and Stay was filed June 24, 1973 and was denied on June 26, 1973.

REASON FOR GRANTING THE WRIT

The District Court determined that abstention was proper in this case, inasmuch as the Indiana courts have not yet considered the questioned statute. Petitioners contend that such a determination by the District Court was proper, and that the United States Court of Appeals for the Seventh Circuit erred in vacating the District Court's Order.

The alleged unconstitutionality of the statute in this case rests upon this Court's statement in Graham v. Richardson, 403 U.S. 365 (1971), that "classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny."

403 U.S. at 372. That case, however, did not hold that no classification based on alienage could ever be constitutional. Indeed, for certain employments within the federal government there are citizenship requirements written into the United States Constitution itself. Article 1, §§2, 3; Article 2, §1.

The Indiana statute in question, then, is one which might or might not be constitutional depending on the reasonableness of the classification in the specific circumstances of the statute and in light of the interest of the state which brought about the classification. It is not necessary in this appeal to decide whether or not the statute actually is constitutional or unconstitutional, (although the State Agency considers it to be constitutional), since there are special procedures for such cases set out in 28 U.S.C. §§2281-2284. It is only

necessary to recognize that the statute falls into the "middle" category in that the issue is dependent upon the reasonableness of the classification in the particular case.

The statute has apparently never been considered by the courts of the State of Indiana for consideration in light of Graham v. Richardson, supra. Thus, there is and can be no authoritative interpretation of the meaning of the statute. A statute is more than just the language set down by the legislative body, so that a federal court consideration should:

> "be based on something that is a complete product of the State, the enactment as phrased by its legislature and construed by its highest court." Harrison v. N.A.A.C.P., 360 U.S. 167 at 178 (1959).

The issue in Harrison was racial segregation, a field into which the

federal courts cannot be said to be hesitant about entering. The Virginia statutes in that case limited organizations which were supporting legislative action or litigation on racial questions. This Court there stated in regard to abstention:

> "This now well-established procedure is aimed at the avoidance of unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced working of our federal system. To minimize the possibility of such interference a 'scrupulous regard for the rightful independence of state governments...should at all times actuate the federal courts,' Matthews v. Rodgers, 284 U.S. 521, 525, as their 'contribution...in furthering the harmonious relation between state and federal authority...' Railroad Comm'n v. Pullman Co., 312 U.S. 496, 501. In the service of this doctrine, which this Court has applied in many different contexts, no principle has found more consistent or clear expression than that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state

courts have been afforded a reasonable opportunity to pass upon them. See, e.g., Railroad Comm'n v. Pullman Co., supra; Chicago v. Fieldcrest Dairies, Inc., 316 U.S. 168; Spector Motor Service, Inc., v. McLaughlin, 323 U.S. 101; American Federation of Labor v. Watson, 327 U.S. 582; Shipman v. DuPre, 339 U.S. 321; Albertson v. Millard, 345 U.S. 242; Government & Civic Employees v. Windsor, 353 U.S. 364. This principle does not, of course, involve the abdication of federal jurisdiction, but only the postponement of its exercise; it serves the policy of comity inherent in the doctrine of abstention; and it spares the federal courts of unnecessary constitutional adjudication. See Chicago v. Fieldcrest Dairies, Inc., supra, at 172-173." 360 U.S. at 176-177.

The Respondent in the instant case contended that the statute is so clear as to present only one possible construction, thus rendering state court consideration useless. The Court of Appeals agreed, stating "we see no ambiguity in the language of the statute

which could avoid the federal question." Petitioners submit that there is considerable basis for doubt that the statute is so free of ambiguity.

The provision under consideration, subsection (2) requires that an applicant be a citizen of the United States. Subsection (10), however, allows a partnership or corporation to be licensed. It is generally recognized — and specifically so under Indiana law — that a corporation is not a "citizen". 18 Am. Jur. 2d "Corporations," §§20, 21; Mutual Manufacturing Company v. Alpaugh, 174 Ind. 381 (1910). Thus the questioned statute both requires United States citizenship and allows license application by noncitizens, all within the same section of the statute. This clearly constitutes an ambiguity allowing construction.

This Court's decision in Lake Carriers Association v. MacMullen, 406 U.S. 498 (1972), also shows the low degree of ambiguity needed to allow abstention. In that case, it was suggested that statutory language stating in part "It is unlawful to discharge, dump, throw or deposit...sewage...from a recreational, domestic or foreign watercraft used for pleasure or [commerce]..." be construed to allow such discharge. The dissenting opinion (greatly relied on by Satoskar in lower court proceedings), considers the language to be so clear as to disallow abstention. The majority, however, held the degree of ambiguity required to be low enough to call for abstention in that case.

Petitioners contend that the instant case clearly called for abstention, as

was determined by the District Court. As previously noted, Lake Carriers Association v. MacMullen, supra, indicated that a low degree of ambiguity is required to allow abstention; and as was shown, the questioned statute is highly ambiguous in both requiring citizenship and allowing licensing to noncitizens. Additionally, it must be noted that there is precedent for construction of a statute such as the one here in question in such manner as to avoid the federal constitutional question.

In Prowd v. Gore, 57 Cal. App. 458 (1922), the court considered a Civil Code provision that all citizens within the state were entitled to full and equal privileges of the theaters. The court ruled that the term "citizen" included the plaintiff, who was merely a resident of the state, and not a citizen. The court

said:

> In our opinion, it was not the intent of the Legislature to restrict the operation of the statute to those only who were subjects of the United States government and exclude therefrom unnaturalized residents of foreign birth.

Additionally, in Sedgwick v. Sedgwick, 50 Colo. 164 (1911) the Colorado court considered a statute providing that no person shall be entitled to divorce unless he shall have been a bona fide resident and citizen of the state for one year. The court held that an alien who had made his home in the state for more than a year was a citizen under the broad meaning of the statute.

These cases indicate that the use of the word "citizen" in a statute is not so free from ambiguity as to preclude any possible construction by a state court that

the term could include aliens. Thus the Indiana courts might well so construe the term in the questioned statute if given opportunity to do so.

CONCLUSION

For the foregoing reasons, it is respectfully prayed that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

THEODORE L. SENDAK
Attorney General of Indiana

A. FRANK GLEAVES, III
Deputy Attorney General

Attorneys for Petitioners

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
ARGUED APRIL 27, 1973
MAY 24, 1973

Before

Hon. LEONARD P. MOORE, Senior Circuit Judge*
Hon. ROGER J. KILEY, Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge

VIJAY V. SATOSKAR, AND ALL OTHERS SIMILARLY SITUATED, Plaintiff-Appellant,	)Appeal from the United States District Court for the Southern District of Indiana,
No. 72-1517	)Indianapolis Division.
INDIANA REAL ESTATE COMMISSION, et al., Defendants-Appellees.	)No. 1 P 72-C-82
	)CALE J. HOLDER, Judge.

O R D E R

Vijay V. Satoskar submitted an application for a license to sell real estate in Indiana in the Spring of 1970. The Indiana Real Estate Commission denied his application and refused permission to

*Senior Circuit Judge Leonard P. Moore of the United States Court of Appeals for the Second Circuit, is sitting by designation.

take a required course of instruction or the license examination on the ground that Satoskar, a resident alien and citizen of India, did not meet the requirement of Burns Ind. Stat. §63-2411(2), which requires that all applicants be citizens of the United States. Satoskar attempted to apply for the examination again in February, 1972. Following a second refusal, he filed this suit pursuant to 42 U.S.C. §1983, seeking injunctive and declaratory relief and alleging that the Indiana statute denies him the equal protection of the law in violation of the Fourteenth Amendment. On April 19, 1972, the district court dismissed those portions of plaintiff's complaint seeking damages, attorney's fees, a temporary restraining order and a determination that the action was properly brought as a class action. On May 19, 1972, the district court

abstained from further action pending a decision by the Indiana state courts on the constitutionality of the Indiana statute. This appeal followed.

The district court's rationale for abstention was that the Indiana state courts might construe the word "citizen" to include "alien." We agree that the doctrine of abstention is properly applied in those instances in which the language of a state statute is ambiguous and open to an interpretation by the state courts which would avoid the federal constitutional question. Lake Carriers' Association v. MacMullan, 406 U.S. 498, 519-11 (1972). In this case, however, we see no ambiguity in the language of the statute which could avoid the federal question.[1] The only

1. Defendants argue that since the Indiana statute permits a corporation to obtain a license there is some ambiguity in the state statute. We fail to see how this exception, stated explicitly in the statute, has any relevance to the unambiguous language prohibiting aliens from obtaining a license.

additional ground for abstention urged in this appeal is that, since the complaint alleged violations of the equal protection clause contained in the Indiana state constitution as well as the federal Amendment and since state courts as well as federal courts have a duty to uphold federal constitutional rights, the state courts should be given the first opportunity to construe the constitutionality of this statute. However,

> "In thus [establishing jurisdiction for the exercise of] federal judicial power, Congress imposed the duty upon all levels of the federal judiciary to give due respect to a suitor's choice of a federal forum for the hearing and decision of his federal constitutional claims. Plainly, escape from that duty is not permissible merely because state courts also have the solemn responsibility, equally with the federal courts, '...to guard, enforce, and protect every right granted or secured by the Constitution of the United States...,' Robb v. Connolly, 111 U.S. 624, 637." Lake Carriers' Association, supra, 406 U.S. at 510; Zwickler v. Koota, 389

U.S. 241, 248 (1967).

We conclude that abstention was improper in this case. The district court order of May 19, 1972, is vacated and the case is remanded with directions to convene a three-judge court pursuant to 28 U.S.C. §§2281 and 2284. The constitutional question raised in this complaint is plainly substantial under the holdings of Graham v. Richardson, 403 U.S. 365 (1971), and Truax v. Raich, 239 U.S. 33, 42 (1915). The district court order of April 19, 1972, dismissing the class action, damages and attorney's fees aspects of the complaint is vacated and remanded for consideration by the three-judge court.

Vacated and remanded for further proceedings.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

NO. 73-1229

INDIANA REAL ESTATE COMMISSION, THOMAS DICKSON, EXECUTIVE SECRETARY; WARD DUNCAN, WILLIAM SCHMIDT, CURTIS HUBER, HARLEY SNYDER, WILLIAM LONG, JAMES BIBILYA, DAVID FAIR, CARL MILLER, REX BREEDEN, DON MC CULLOUGH, EUGENE MC CLAIN, FRED KELLY, WAYNE SMELTZER, MEMBERS OF THE BOARD OF DIRECTORS OF THE INDIANA REAL ESTATE COMMISSION, STATE OF INDIANA,

Petitioners,

-v-

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Respondents.

MOTION TO AFFIRM

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IN THE SUPREME COURT OF THE

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Respondents.

MOTION TO AFFIRM

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MOTION TO AFFIRM

OPINION BELOW

The Order of the United States Court of Appeals for the Seventh Circuit is unreported, but the Order is set out in Appendix A of Petitioners' Writ.

STATUTES AND REGULATIONS INVOLVED

Indiana Code of 1971, 25-34-1-12, as found in Burns Indiana Statutes Annotated §63-2411(2):

> 63-2411. Minimum standards and requirements for licensure of real estate salesmen and brokers--salesman restrictions. --the Commission shall require all applicants for licensure as a real estate salesman or real estate broker to have and possess the following minimum standards to qualify for licensure:
>
> (2) All applicants must be citizens of the United States prior to submitting an application for licensure.
>
> (10) A partnership or corporation shall be eligible for licensure as a real estate broker upon proper application having been made to the commission by such partnership or corporation: Provided, however, that if the application is a partnership, all members thereof shall have been licensed as such real estate broker, and all of the employees of said partnership active in the sale of real estate, shall be licensed as a real estate broker or real estate salesman according to the terms of this statute. If the application for such license is a corporation, proof must be submitted that such corporation shall have the sponsoring or

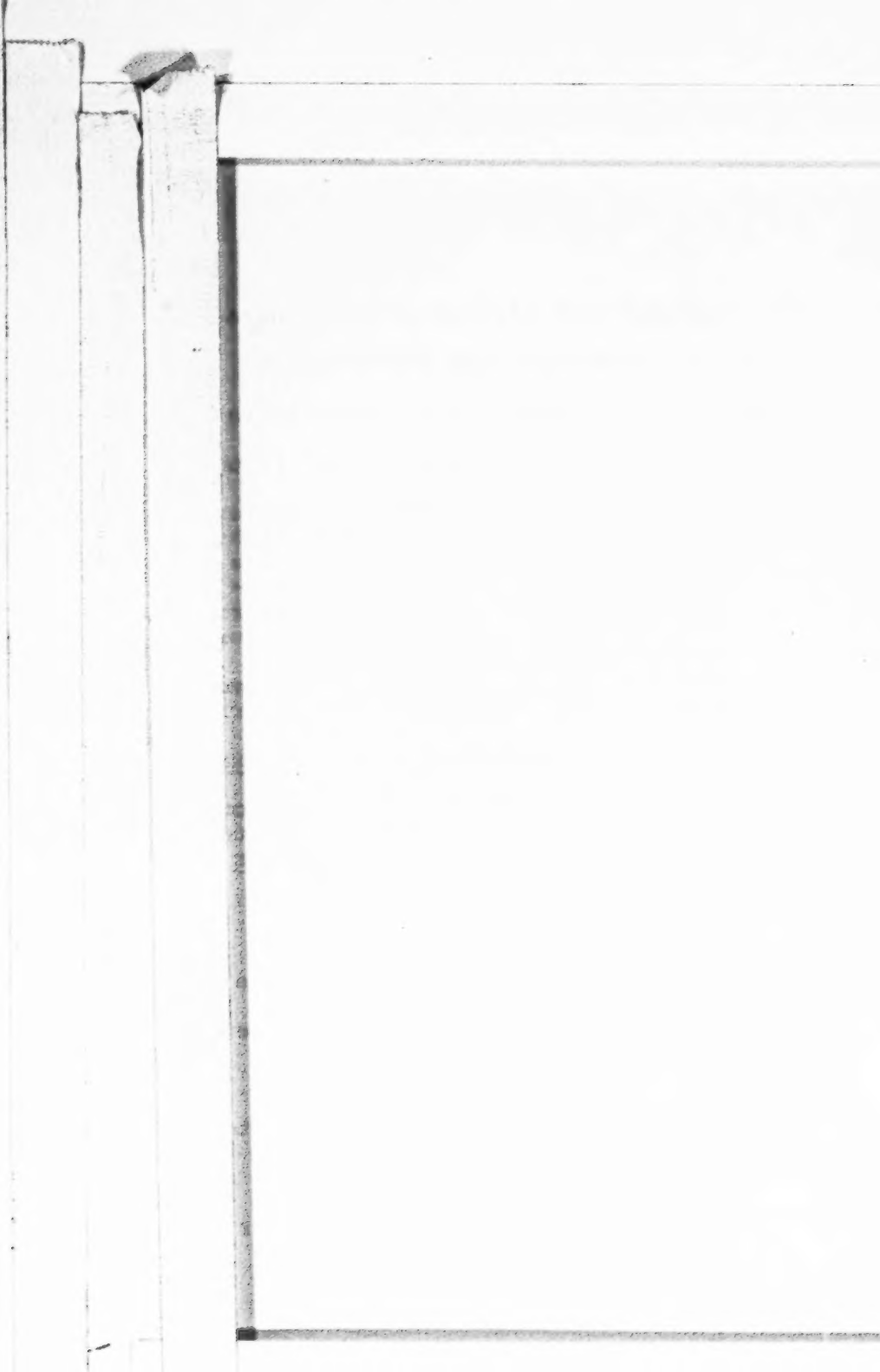
> responsible individual duly licensed as a real estate broker under the provisions of this statute, and that all of the employees, agents and officers of said corporation who intend or do engage in the active sale of real estate or otherwise performing the duties of real estate salesman or brokers under the terms of this act shall be duly licensed as a real estate broker or real estate salesman pursuant to the provisions of this statute.

ARGUMENT

Petitioner has urged two alternative theories to justify abstention in the district court. His first theory may be called "The Full-Record Doctrine." The other theory entails obfuscating the obvious by creating ambiguity where none exists so that the matter be relegated to state courts. Both of these theories are extremely dangerous and are antithetical to a true balance of federal and state judicial systems. Under both theories, if

Harris 401 U.S. 54 (1971) has somewhat revitalized the Pullman Doctrine, allowing the state courts to have a first crack at interpreting the constitutionality of state statutes, the balance has not shifted irretrievably away from federal adjudication of substantial constitutional claims. Zwickler vs. Koota 389 U.S. 241, 248 (1967) is still very much alive and the Seventh Circuit recognizes its applicability to the Satoskar Case in its order:

> "In thus [establishing jurisdiction for the exercise of] federal judicial power, Congress imposed the duty upon all levels of the federal judiciary to give due respect to a suitor's choice of a federal forum for the hearing and decision of his federal constitutional claims. Plainly, escape from that duty is not permissible merely because state courts also have the solemn responsibility, equally with the federal courts, '. . . to guard, enforce, and protect every right granted or secured by the Constitution of the United States. . .,' Robb vs. Connally, 111 U.S. 624, 637."



they argue this is a special limited circumstance which would justify abstention. They argue that a full record must be made in the state court before any appeal can be made to the Supreme Court. In support of that position, they contend that the statute precluding aliens from securing real estate licenses is ambiguous and open to interpretation.

The ends that the state has gone to find ambiguity when none exists is both comical and absurd. The first feeble attempt to find ambiguity in the statute was suggested in the May 19th order of the District judge where he posits the theory "for example, the Indiana State Courts may construe such term citizen of the United State as opposed to other aliens of less than permanent visa status." The District judge tried to put a constitutional gloss

on an otherwise unconstitutional statute without justification. To do so, the state ignored the plain meaning of the statute. The Seventh Circuit's order on page 2 acknowledges the District Court's rationale was that the Indiana State Courts might construe the word citizen to include alien. The Seventh Circuit's response was: "In this case however, we can see now no ambiguity in the language of the statute which would avoid the Federal question." The Harrison argument would allow for abstention only when the statute is "fairly open to interpretation." The state is not being fair when they play havoc with the plain meaning of the word "alien" and argue by some linguistic sleight-of-hand trick that the state court can construe the word "alien" to mean citizen. If that indeed is the Real Estate

Commission's sincere position, why not stand by that conviction and allow Vijay Satoskar his opportunity to secure a real estate license under their interpretation of alien qua citizen that they now advance in their reasons for granting Certiorari.

The other ground argued by the Real Estate Commission in finding some ambiguity for state court interpretation is that section 10 of the same statute provides that a corporation may secure a real estate license and goes on to say as long as:

> ". . .proof must be submitted that such corporation shall have the sponsoring or responsible individual duly licensed as a real estate broker under the provisions of this statute, and that all of the employees, agents and officers of said corporation who intend or do engage in the active sale of real estate or otherwise performing the duties of real estate salesman or brokers under the terms of this act shall be duly licensed as a real estate broker or real estate salesman pursuant to the provisions of this statute [Burns In. Stat. Ann. §63-2411 (2)].

The stated corporate exception has no bearing on Vijay's claim.

What good does it do Vijay to incorporate since this is basically a one-man operation and he would still be disqualified under Section 2 of the statute from securing a real estate license. Therefore, it is pure fantasy to argue that the Section 10 somehow corrects the constitutional deprivation in Section 2 of a real estate licensing statute. In fact, Section 10 only compounds the constitutional infirmity. Also, as the Seventh Circuit indicates in its footnote, "we failed to see how this exception stated explicitly in the statute has any relevance on the unambiguous language prohibited the aliens from obtaining a license." Therefore, the Seventh Circuit saw the fallacy in the argument for the Supreme Court to read in ambiguity

where none exists is a linguistic distortion that cannot possibly justify abstention.

The State then cites for authority two state appellate court cases, a California case of 1922 and a Colorado case of 1911, one which held that an alien could be allowed into a theatre in the State of California and the other that an alien can get a divorce in the State of Colorado. Neither of these cases have anything to do with abstention or the proposition that there is ambiguity in the Indiana Statute. To exclude aliens from movie theatres and to force them to remain married to an unwilling spouse are untenable positions. It seems ludicrous to exclude the aliens from these activities and the date of these cases show that they preceeded the

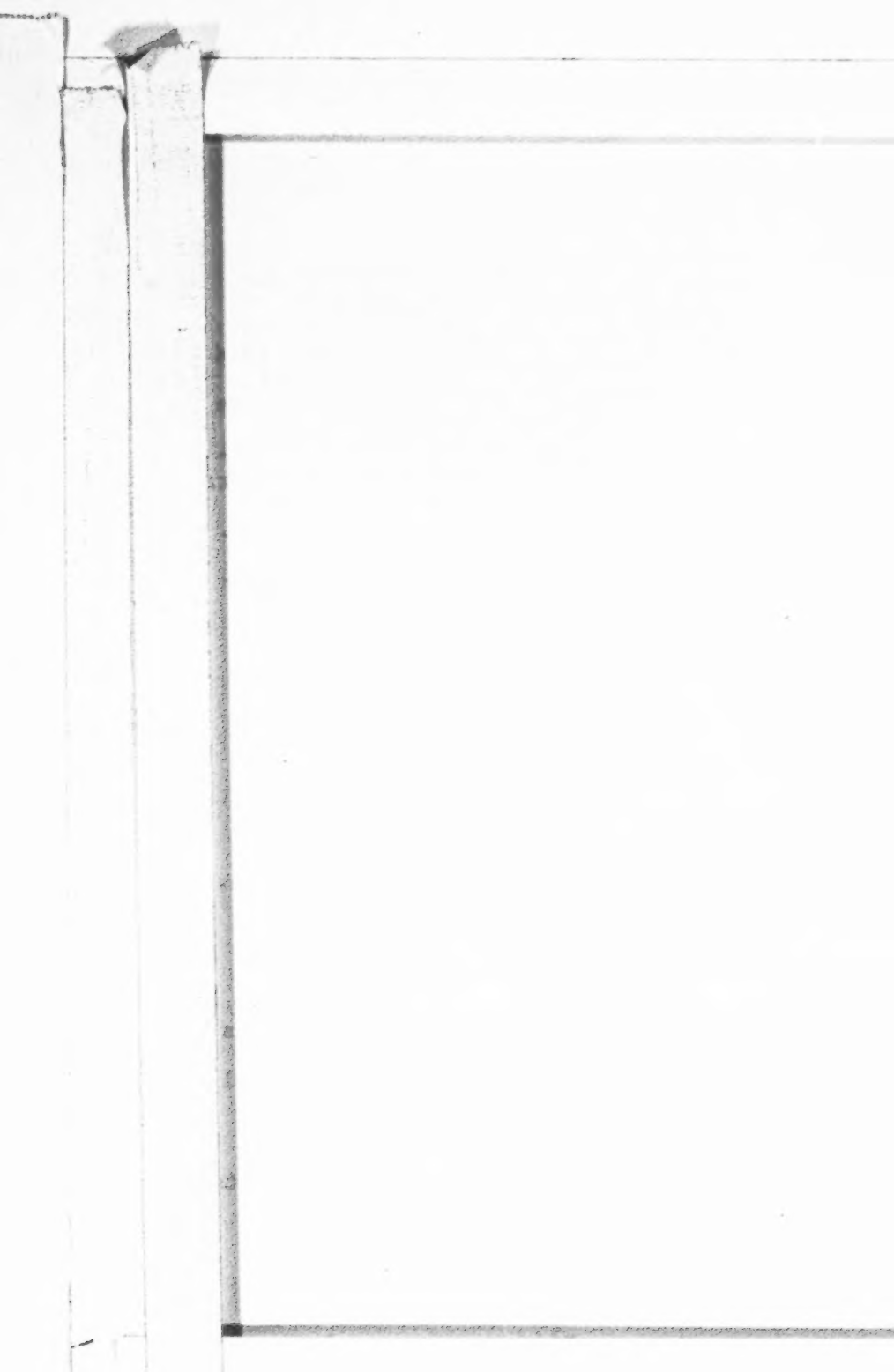
recent barrage of federal litigation dealing with the rights of aliens. None of these cases involve challenges in the federal court and both of these results were inevitably due to the arbitrary nature of the exclusion. While it is quite conceivable that a state court would throw out the challenged state statute on the federal constitutional principles or in the alternative might give the statute a limiting construction to avoid the constitutional issue allowing Vijay to secure his real estate license, nevertheless, this conjecture is irrelevant as to what constitutes the proper application of the Abstention Doctrine.

> "If the state statute in question, although never interpreted by a state tribunal, is not fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question, it is the duty of the federal

> court to exercise its properly invoked jurisdiction. Baggett vs. Bullitt, 377 U.S. 360, 375-379, 12 L ed 2d 377, 387-389, 84 S. Ct. 1316. Thus, 'recognition of the role of state courts as the final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law.' England vs. Louisiana State Board of Medical Examiners, 375 U.S. 411, 415-416, 11 L ed 2d 440, 445, 84 S. Ct. 461." [Harman vs. Forssenius, 380 U.S. 528, 534-6, 85 S. Ct. 1177, 14 L. Ed. 50, 55-6 (1965)].

The state statute involved here is clear and unambiguous in all material respects. The Abstention Doctrine, when applied promiscuously, creates a merry-go-round effect with concomitant delay and expense.

Respondent maintains that in areas of vital federal concerns the litigant has a choice of forum. The federal courts are insulated to a great extent from local political concerns and are therefore perfect arbiters of controversial civil rights or civil liberties cases. The federal courts have historically protected funda-



mental constitutional rights particularly in those sensitive areas where local political pressure are brought to bear. The Enactment of 42 USC 1983 was a direct grant to the federal courts of jurisdiction over these kinds of cases. As Justice Douglas so eloquently stated in McNeese vs. Board of Education 373 U.S. 668, 672 (1963):

> "We would defeat those purposes [of the Civil Rights Act] if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court. The First Congress created federal courts as the chief--though not always the exclusive--tribunals for enforcement of federal rights.

The most recent pronouncement by the Supreme Court on abstention, Lake Carriers Association vs. MacMullan 406 U.S. 498, 1972 did allow abstention in a case involving an attempt by an

ecological group in Michigan to enjoin certain watercrafts from polluting Lake Michigan under the Michigan Watercraft Pollution Control Act of 1970. In that case, the court abstained over a dissent by Chief Justice Burger and Justice Powell on the grounds that new federal regulations were coming down to interpret the Michigan Act and clear up any ambiguity. Therefore, there was no real reason for the Federal Court to decide the issue at the time.

The Lake Carriers case again reiterated the Zwickler line of reasoning and emphasized that abstention is a Judge-made doctrine only to be applied under very special circumstances, justifying the time and expense which the application of the doctrine inevitably produces.

To apply the doctrine of abstention to the instant case after this Court has decided in Re Griffiths (41 LW 5143) is to pervert the entire justification behind the abstention doctrine. The case is properly lodged in the federal forum, there is no reason for the federal court this time to defer to a state court determination as to whether Vijay Satoskar, an alien, can secure a real estate license. The rationale in the Griffiths case decided on June 25 of this year forecloses the issue once and for all. Therefore, for the federal court to retain jurisdiction pending an outcome in the state courts on the merits is judicial inefficiency. The intervening Griffiths decision and its implications makes the State Attorney General's Petition for Writ of Certiorari even more puzzling and futile.

At no time has federal jurisdiction been ceded or reduced in civil rights matters, but rather, the federal courts have adopted the judge-made doctrine of abstention to avoid a friction between the federal and state systems. As an accommodation to valid state concerns, federal courts have abstained in cases where a single state adjudication can clear up the linguistic ambiguity and avoid the constitutional question. In the Satoskar Case, the constitutional confrontation between the licensing statute of the state and the Fourteenth Amendment of the Constitution is unavoidable. There is no ambiguity here and unlike Younger vs. Harris and companion cases, there is no prior civil or criminal litigation on this point in the state system. Therefore, the court must not lose sight of its paramount responsibility to adjudicate cases

involving protected federal constitutional rights that are properly lodged in the federal forum. This is particularly true when the statute is on its face unconstitutional and is not subject to a narrowing interpretation in state courts.

In Mitchum vs. Foster 407 U.S. 225- S. Ct. 32 L Ed 2 705, 716, Justice Stewart recently stated the whole concept behind Section 1983:

> "Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation."

There is no indication that there is any relevant precedent for interpreting the word "citizen," appearing in the Indiana statute, other than as the dictionary definition which is as follows: "A member of a state; a person, native or naturalized, who owes allegiance to a

government, is entitled to protection from it; opposed to alien" (Webster's Collegiate Dictionary). Therefore the definition of citizen is diametrically opposed to that of alien so to construe the meaning of the word to allow Vijay to secure a real estate license, the state court must flip-flop the word "citizen" and replace it with its antonym. This is not a statute that's fairly open to interpretation. This is also not an issue where the litigant must go into the state court and get a full record before he can get into the federal system. This case was properly lodged in the federal forum invoking Section 1983 and the Fourteenth Amendment. Therefore, on both counts, the Seventh Circuit was correct in finding that abstention was improper.

CONCLUSION

Appellee respectfully submits that the Seventh Circuit Court was correct and prays this Court to affirm the judgment of the Circuit Court of Appeals.

PROOF OF SERVICE

STATE OF INDIANA, COUNTY OF MARION, SS:

M. Daniel Friedland, being first duly sworn upon his oath says that he is counsel for Respondents in the above entitled cause and that on the 10th day of September, 1973, he served upon the opposing party in the above entitled cause three (3) copies of Motion to Affirm by depositing same in the United States Mail, postage paid first class at Indianapolis, Indiana, properly addressed as follows:

Theodore L. Sendak
Attorney General of Indiana

Richard C. Johnson
Deputy Attorney General

A. Frank Gleaves, III
Deputy Attorney General

Offices of the Attorney General
219 State House
Indianapolis, Indiana 46204

M. Daniel Friedland
Attorney for Respondents

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 10 day of September, 1973.

Notary Public

My Commission Expires: 7-17-77